IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7081 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARMISHTHABEN POPATLAL PATEL - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 1 - Respondent(s)

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Appearance :

MR HASHIM QURESHI for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/03/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order

directing the respondents to consider her application and to appoint her as Primary Teacher following to the advertisement dated 13th October, 1992.

2. While admitting the present Special Civil Application, the learned Single Judge of this Court has passed the following order on 26th September, 1997.

> ***"Rule. To be heard with Letters Patent Appeal No.302 of 1993. The petitioner is directed to furnish additional set of Paper Book within a period of six weeks from today. By way of interim order, respondent No.2 is directed to consider the application of the petitioner for appointment as a primary teacher made pursuant to the advertisement dated 13.10.1992 at Annexure-A to the petition and, if the petitioner is found to have attained the standards of selection set by respondent No.2, the petitioner shall be called for interview. The petitioner may also be offered appointment if the petitioner is selected according to her merit.***

If such appointment is made, same shall be subject to the result of this petition. In the event the petitioner loses in this petition, the petitioner shall not be entitled to claim equity on account of such appointment. Direct Service is permitted.

Learned Counsel Mr. Qureshi prays that this order be stayed for a period of 15 days. Request is rejected."

3. It appears from the petition, more particularly, Ground – C that the petitioner has submitted that identical petitions being Special Civil Application Nos. 7865 of 1996 and 7864 of 1996 which are admitted and the learned Single Judge has granted the interim order and on considering the same, the learned Single Judge while admitting the present Special Civil Application, granted the aforesaid interim order.

4. Shri Dipen Desai, learned AGP has submitted that one of the Special Civil Application relied upon by the petitioner being Special Civil

Application 7864 of 1996 was placed before the Division Bench of this Court and by order dated 1st April, 1998 the Division Bench of this Court, considering the decision in Letters Patent Appeal No. 289 of 1993 and connected appeals, has dismissed the said Special Civil Application by holding that the petitioner is not entitled to any of the reliefs asked for as she has not completed 18 years of age as on 1st July, 1992.

5. Considering the order passed by the Division Bench of this Court dated 1st April, 1998 passed in Special Civil Application No. 7864 of 1996 and considering the fact that the issue raised in the present petition is squarely covered by the decision in Letters Patent Appeal No. 289 of 1993 and connected appeals and Special Civil Applications and also considering the fact that in the Letters Patent Appeal as well as Special Civil Applications the case of the petitioners was on the basis of the advertisement dated 13th October, 1992 and as the petitioner has not completed 18 years of age as on 1st July, 1992,

the petitioner is not entitled to any of the reliefs asked for. Hence, petition fails and is accordingly dismissed. Rule is discharged. Interim order is vacated. It is also clarified that if pursuant to the interim order dated 26th September, 1997 the petitioner has secured any appointment, the same was subject to the result of the present Special Civil Application and in the event the petitioner loses in this petition, the petitioner shall not be entitled to claim equity on account of such appointment. On vacation of the interim order, the petitioner will not be entitled to continue if the petitioner has secured the appointment pursuant to the interim order and necessary consequences must follow. No costs.

[M.R.Shah, J.]

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